

TITLE 14 . NATURAL RESOURCES

DIVISION 4, DEPARTMENT OF BOATING AND WATERWAYS

CHAPTER 1. DEPARTMENT OF BOATING AND WATERWAYS

ARTICLE 11 SELECTION PROCESS FOR PRIVATE ARCHITECTURAL, LANDSCAPE ARCHITECTURAL, ENGINEERING, ENVIRONMENTAL, LAND SURVEYING AND CONSTRUCTION PROJECT MANAGEMENT FIRMS

Final Statement of Reasons

In the Initial Statement of Reasons, published April 4, 2003, the Department of Boating and Waterways ("Department") proposed to adopt regulations that implement, interpret and make specific the selection and award process of private architectural, landscape architectural, engineering, environmental, land surveying, and construction project management firms pursuant to Government Code 4525 et seq., and Public Contract Code section 6106. The regulation package was proposed to adopt section 8100, Title 14, California Code of regulations.

The Department is authorized by the Harbors and Navigation Code to plan and develop boating facilities on state-managed properties to enhance recreational boating and navigation. These Capital Outlay projects are subject to the approval of the legislature, and are predicated on funding availability, cost effectiveness, and environmental soundness of work.

1. Update of Information in the Initial Statement of Reasons

The specific amendments to these proposed regulations are in sections 8100.5 (Annual Qualifications) and 8100.13 (Prohibited Relationships).

Section 8100.5 Annual Qualifications. The amendment specifies that the annual statements of qualifications and performance data may be submitted throughout the year, but will not be considered if the statement is on file with the Department for longer than one year and not subsequently renewed or refiled with the Department. Secondly, we are deleting the last sentence that specifies the format for submittal of qualifications and performance data to the Department.

The changes to add the time limit for submittal of the annual statement of qualifications and performance data were made to comply with the clarity standard of the Administrative Procedure Act and the provisions of Government Code section 4527. The second sentence is being deleted because the Department determined that it is not necessary to establish the format for submittal of qualifications and performance

data to the Department since this information is already addressed in Government Code 4527.

Section 8100.13 Prohibited Relationships. An editorial, non-substantive amendment was made in the NOTE portion, i.e., at the foot of the regulation, by adding the reference of Government Code section 4527, as an authority and reference citation for this regulation.

The amendment was made to comply with having the complete authority and reference citations as required by the Administrative Procedure Act.

2. Summary of Objections or Recommendations Made Regarding the Specific Adoption, Amendment or Repeal Proposed.

The comments we received after the Department submitted the rulemaking package had deficiencies pointed out by Craig Tarpenning, Senior Legal Counsel of OAL. In his oral comments, Mr. Tarpenning pointed out several deficiencies:

Section 8100.5 lacked clarity because the Department indicated that it may establish the format for submittal of qualifications and performance data to the Department, because no specific format was actually specified or provided. The Department prepared amendments to correct this deficiency and circulated the amended text in a 15-day Notice of Availability to persons who had requested to be notified of proposed rulemaking by the Department, as well as persons who had requested to be notified of any substantial amendments to our proposed regulations. The 15-Day Notice of Availability began on October 14, 2003, and ended on October 30, 2003. No further comments were received.

Section 8100.13 did not have a complete reference citation in the NOTE portion of this regulation. Mr. Tarpenning suggested we add Government code section 4527 in both the authority and reference citations to make to NOTE portion complete. The Department made these corrections and circulated the amended text in a 15-day Notice of Availability to persons who had requested to be notified of proposed rulemaking by the Department, as well as persons who had requested to be notified of any substantial amendments to our proposed regulations. The 15-Day Notice of Availability began on October 14, 2003, and ended on October 30, 2003. No further comments were received.

The Rulemaking package did not make a statement of determination that the proposed regulations had considered all the alternatives and that the selected alternative was the preferred alternative and would reduce the impact on small businesses. We have subsequently made these additional

statements and included these in this Final Statement of Reasons (See sections 3 and 4, below).

3. Determination of Alternatives.

The Department received comments noted above, suggesting that the Department should either specify the format for the annual statements of qualifications to be submitted to the Department, because the format was left unspecified and could constitute an “underground regulation,” or delete it from regulation. The Department made the proposed amendment by deleting the provision that specified the Department would make the determination about the format in which the annual statements were to be submitted. This proposed amendment was made because the format for submission of qualifications was already specified in Government Code section 4527. We also amended the authority and reference citations in the NOTE portions of the footnote to include a reference to Government Code section 4527.

The Department has determined that the alternatives proposed above would be more effective in carrying out the intent for which the regulation is proposed, and would be as effective and less burdensome to affected private persons than the original proposed regulation.

4. Alternatives to Reduce Impacts on Small Business.

The Department has determined that the amended alternative proposed in this final rulemaking package would have no adverse effect on the small businesses that may be impacted by these proposed regulations, and that no other alternative proposed would have less of an impact.

5. Determination as to Whether the Proposed Regulations Impose a mandate on Local Agencies or School Districts.

The Department has determined that the adoption of these regulations does not impose a mandate on any local agencies or school districts. Please see the Department’s statement under Section A of the Fiscal Impact statement (STD 399)